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4 MARKUP OF: H.R. 2122, THE "REGULATORY ACCOUNTABILITY ACT OF
5 2013"; AND

6 H.R. 2641, THE "RESPONSIBLY AND PROFESSIONALLY INVIGORATING
7 DEVELOPMENT ACT OF 2013"

8 Thursday, July 18, 2013

9 House of Representatives

10 Subcommittee on Regulatory Reform, Commercial and Antitrust

11 Law

12 Committee on the Judiciary

13 Washington, D.C.

14 The subcommittee met, pursuant to call, at 2:38 p.m.,
15 in Room 2141, Rayburn Office Building, Hon. Spencer Bachus,
16 [chairman of the subcommittee] presiding.

17 Present: Representatives Bachus, Goodlatte, Marino,
18 Farenthold, Holding, Collins, Smith of Missouri, Cohen,
19 DelBene, and Jeffries.

20 Staff present: Majority Staff Director, Shelley
21 Husband; Majority Parliamentarian, Allison Halataei;
22 Majority Clerk, Kelsey Deterding; Majority Counsel, Daniel
23 Flores; Minority Staff Director, Perry Apfelbaum; Minority
24 Parliamentarian, Danielle Brown; Minority Counsel, James
25 Park.

26

27 Mr. Bachus. The Subcommittee on Regulatory Reform,
28 Commercial and Antitrust Law will come to order.

29 Without objection, the chair is authorized to declare a
30 recess at any time.

31 We are going to change the order of the bills and go to
32 Mr. Marino's bill. What we are going to do is we will not
33 do anything without votes. We are going to call up H.R.
34 6441, the Responsibly and Professionally Invigorating
35 Development (RAPID) Act of 2013. Pursuant to notice, I now
36 call that bill up for purposes of markup.

37 The Clerk will report the bill.

38 Ms. Deterding. H.R. 2641, to provide for improved
39 coordination and --

40 Mr. Bachus. Without objection, the bill is considered
41 read and open for amendment at any point.

42 [The information follows:]

43

44 Mr. Bachus. I will begin by recognizing the sponsor of
45 the bill, Mr. Marino, for an opening statement.

46 He needs just a minute? Okay. All right. Well, I will
47 recognize myself for an opening statement. I thought you
48 would like to get on with it, so I will do an opening
49 statement.

50 Summer is what we usually know as a high time for
51 outdoor construction projects. Each of these projects has
52 created jobs, improving safety in doing things like
53 modernizing our transportation system. If anything, we
54 should be investing more in infrastructure.

55 Unfortunately, there is a roadblock out there to
56 completing all the work that we desperately need to get
57 done, and that is the inexcusable slow process imposed by
58 Washington on permitting of new construction projects.

59 Under the National Environmental Policy Act, Federal
60 agencies must review proposed new projects for environmental
61 impacts, and that is fine, but it is unacceptable that the
62 process has grown to one that drags out for years.

63 President Obama has noted this. He said in Baltimore
64 this May, "One of the problems we have had in the past is

65 that sometimes it takes too long to get projects off the
66 ground. There are all these permits and red tape and
67 planning and this and that, and some of it is important to
68 do, but we can do it faster."

69 Quite frankly, it was the original intent that we would
70 do it faster. When NEPA was in its infancy, the Council on
71 Environmental Quality promised that under NEPA regulations
72 even large complex energy projects would require only 12
73 months from the completion of the entire environmental
74 impact statement. Now, instead, it sometimes seems
75 incredibly difficult to get permission in a timely manner
76 for even a small project. When it comes to large projects,
77 the construction in the Northern Beltline in the Birmingham
78 area I represent, the challenges are even greater.

79 The legislation we are marking up today, the RAPID Act,
80 would streamline the permitting process in a way that would
81 still allow all appropriate environmental reviews to be
82 done. It would reduce the time it takes to review new
83 construction projects and ensure that the permitting process
84 is not endlessly held up in court.

85 Let me thank Mr. Marino for reintroducing this

86 legislation. I am proud to be an original co-sponsor of the
87 bill with him. And the other co-sponsors, just to recognize
88 them, are Mr. Coble, Mr. Franks, Mr. Holding, Mr. Smith of
89 Texas, and Mr. Smith of Missouri.

90 This legislation is modeled on the successful permit
91 streamlining provisions of the recent bipartisan Team Safety
92 Loop and MAP-21 transportation bills. Both of these
93 transportation reauthorization bills have my strong support.
94 Under Safety Loop alone, the time from an environmental
95 impact statement has been cut nearly in half, but further
96 reforms are needed, and the RAPID Act is a further step
97 forward.

98 Let me conclude by saying one thing we agree on, and
99 that is the need for more jobs. Construction jobs can be
100 some of the best-paying jobs in America, and when you talk
101 about young people, the summer construction job can be a way
102 to help pay for college. To me, this is a winning piece of
103 legislation that will create jobs and allow us to get on
104 with the urgent task of modernizing our nation's crumbling
105 infrastructure.

106 At this time, I recognize the ranking member for his

107 opening statement.

108 Mr. Cohen. Thank you, Mr. Chairman. And in the spirit
109 that I like to work with you in this committee and get
110 things moving along, I would like to just say my opening
111 statement says that we are not going to support this bill,
112 that this is more of the same, blah blah blah, blah blah
113 blah. And I would like to submit it for the record with
114 additional remarks that are contained therein, and also put
115 Mr. Conyers' statement in the record.

116 [The information follows:]

117

118 Mr. Bachus. Thank you, Mr. Cohen, for more of the same,
119 and I appreciate that very much.

120 I now recognize the gentleman from Pennsylvania, the
121 sponsor of this bill, Mr. Marino, for his opening statement.

122 Mr. Marino. Thank you, Chairman. And my good friend,
123 Mr. Cohen, thank you, because the "blah blah blah" is the
124 best I have heard out of that side for a while.

125 Mr. Chairman, H.R. 2641, the Responsibly and
126 Professionally Invigorating Development (RAPID) Act of 2013,
127 will remove the red tape and allow job creators to take
128 projects off the drawing board and onto the work site.

129 As we heard in the hearing on this bill, the job
130 opportunities are right here on U.S. soil. In fact, the
131 number of projects currently awaiting approval is
132 staggering. Yet, due to the expansion of government
133 bureaucracy, millions of potential new jobs are hanging in
134 the balance.

135 The delay of these projects is devastating to our
136 economy, and it is happening all over the country. A recent
137 study by the U.S. Chamber entitled "Project/No Project"
138 looked at the potential economic impact of permitting

139 challenges faced by U.S. companies. This study was able to
140 identify 351 state-level projects that, if approved for
141 construction, could have created 1.9 million jobs annually
142 during the projected seven years of construction.

143 Mr. Chairman, these numbers help put the issue in
144 perspective for us. But I do not need to see a study to
145 know that bureaucracy is holding up projects and preventing
146 job growth. I see it every day in my home town.

147 For example, PPL Electric Utilities and Public Service
148 Electric and Gas Company jointly proposed to build the
149 Susquehanna Roseland Project, a 500-kilovolt overhead power
150 line which would run through Pike, Wayne, and Lackawanna
151 Counties in my district. While I am pleased to announce
152 this project is now underway and is expected to be completed
153 by 2015, it faced years of delay due to an unreasonable,
154 prolonged environmental approval process.

155 For example, it took the National Park Service more than
156 three years to grant the utility company's request for a
157 right-of-way and special-use permits to construct the
158 project. Just think about that. It literally took longer
159 to get approval from the Federal Government to move forward

160 with the project than it will take to complete the project
161 from start to finish.

162 Is it any wonder that our economy is sputtering along
163 this recovery when our overly burdensome regulatory system
164 is strangling private sector growth? Let me be clear. The
165 National Environmental Policy Act of 1969 serves worthy
166 goals which should be preserved. Federal agencies should
167 have the awareness of how their actions affect the
168 environment, and this decision-making process should be
169 transparent to the public.

170 However, as the Administration and the President's
171 Council on Jobs and Competitiveness, and the legislation
172 adopted by the 109th and the 112th Congresses have already
173 recognized, an overly burdensome and lengthy environmental
174 review and permitting process undermines economic growth.

175 My bill, the RAPID Act of 2013, aims to restore the
176 balance between thorough analysis and timely decision-making
177 in the Federal permitting process. This bill would codify
178 concepts, definitions, and establish best practices from
179 NEPA regulations to ensure the Federal review and permitting
180 process is efficient and transparent. Furthermore, this

181 bill would empower lead agencies to manage environmental
182 reviews from start to finish, as well as establish time
183 constraints on both the period of time to complete the
184 review process and the window of time in which parties can
185 bring suit.

186 Mr. Chairman, this bill is critical because we should be
187 doing all we can to create an environment to allow our job
188 creators to thrive. The future of this country is counting
189 on it.

190 In closing, I want to thank my co-sponsors, Chairman
191 Bachus, Mr. Coble, Mr. Smith, Mr. Franks, Mr. Bonner, Mr.
192 Owens, and Mr. Amodei, for their support. I would also like
193 to thank the chairman for bringing this bill before us for a
194 markup today.

195 I appreciate Mr. Cohen's indications in the past to work
196 to improve this bill. I look forward to working with him on
197 this and believe this is the time when politics should be
198 put aside. We should come together to find a bipartisan
199 solution that makes dealing with Federal agencies more
200 efficient and transparent for job creation.

201 I yield back, and thank you.

202 Mr. Bachus. Thank you, Mr. Marino.

203 Let me ask unanimous consent that the statement of the
204 Honorable Steve Cohen be included in the record immediately
205 following my statement, and that the statement of the full
206 committee ranking member, Mr. Conyers, be included following
207 that statement.

208 At this time, are there any amendments?

209 Seeing there are no amendments, a reporting quorum being
210 present, the question is on reporting the bill favorably to
211 the full committee.

212 Those in favor, say aye.

213 Those opposed, no.

214 The ayes have it and the bill will be reported to the
215 full committee.

216 The mic got cut off. Let me say that again.

217 A reporting quorum being present, the question is on
218 reporting the bill favorably to the full committee.

219 Those in favor, say aye.

220 Those opposed, no.

221 The ayes have it and the bill is ordered reported
222 favorably to the full committee.

223 I would like to offer the statements of, the full
224 statements of Chairman Bob Goodlatte on H.R. 2641, without
225 objection.

226 [The information follows:]

227

228 Mr. Bachus. At this time, pursuant to notice, I now
229 call up H.R. 2122 for purposes of markup. The Clerk will
230 report the bill.

231 Ms. Deterding. H.R. 2122, to reform the process by
232 which Federal agencies analyze --

233 Mr. Bachus. Without objection, the bill is considered
234 as read and open for amendment at any point.

235 [The information follows:]

236

237 Mr. Bachus. I am going to reserve my opening statement
238 at this time and ask Mr. Cohen if he has an opening
239 statement, the ranking member.

240 Mr. Cohen. Thank you, sir. I do have an opening
241 statement, and I will just do as I have, enter it.

242 I would like to say on the previous bill that Mr. Marino
243 is right. We have asked Mr. Schlesinger, I think was his
244 name, and the gentleman, Mr. Kovac, I think it was, from the
245 Chamber to work together to hopefully come up with
246 something, and we are trying to do some bipartisan things.
247 I voted in Transportation today with Chabot and against
248 Garamendi to help pass the Delta Queen and get it back on
249 the river to create jobs, and I think I voted for the
250 Journal today.

251 With that, I would ask unanimous consent to accept my
252 statement, and Mr. Conyers' as well.

253 Mr. Bachus. Thank you. Without objection.

254 [The information follows:]

255

256 Mr. Collins. Mr. Chairman, was that Mr. Cohen who voted
257 for the Journal today, as well? We voted apart from each
258 other. I did it against the Journal.

259 Mr. Cohen, we are flip-flopping here between the two of
260 us. It is good to see that.

261 Mr. Cohen. Well, you are young.

262 Mr. Collins. I am learning, you know.

263 Mr. Bachus. All right. It seems like the gentlemen
264 from Georgia and Tennessee are working closely together.

265 So I would, in the spirit of cooperation, I would like
266 to simply introduce my opening statement and that of
267 Chairman Bob Goodlatte for the record.

268 [The information follows:]

269

270 Mr. Bachus. Well, actually, I am going to recognize
271 Chairman Goodlatte for his opening statement.

272 Chairman Goodlatte. Mr. Chairman, thank you very much
273 for holding this markup.

274 Mr. Cohen. Can I object?

275 Chairman Goodlatte. Do you want to?

276 Mr. Cohen. Not really. It is just we have so much fun
277 in here not doing statements.

278 Chairman Goodlatte. Yes. Okay. So, for over four
279 years, since the Great Recession officially ended, America's
280 workers and small businesses have waited for real recovery
281 to take hold. The latest signs that full recovery continues
282 to elude us came in the June jobs report. The June report
283 showed an increase of 240,000 in the number of discouraged
284 workers, those who have simply quit looking for a job out of
285 frustration or despair. The number of people working part-
286 time but who really want full-time work passed 8.2 million.
287 That represents a jump of 322,000 in just one month. Worst
288 of all, the truest measure of unemployment, the rate that
289 includes both discouraged workers and those who cannot find
290 a full-time job, continues to exceed 20 million Americans,

291 and that rate rose from 13.8 percent back to 14.3 percent in
292 June.

293 The reason true recovery has yet to arrive is plain to
294 see. Real historical economic growth rates are missing.
295 They have been ever since the Great Recession. Some say
296 this is a new normal, a yearly growth rate on the order of 2
297 percent, in contrast to America's historically higher growth
298 rate. But a new normal of suppressed growth, lowered
299 expectations and more than 20 million Americans unemployed
300 or under-employed is something America's workers and small
301 businesses cannot accept and America's leaders must reject.

302 One of the biggest obstacles standing in the way of
303 growth and job creation is the growing wall of Federal
304 regulation being built in Washington. Regulation surely has
305 a role to play in ensuring public health, safety and
306 welfare, but there is no reason Americans need to choose
307 between having regulation that keeps us safe and having
308 economic growth that allows us to prosper.

309 That is why I reintroduced the Regulatory Accountability
310 Act this Congress. It reforms the Administrative Procedures
311 Act, the constitution of Federal regulation, some of the

312 most important regulatory reforms that we can pass.

313 Under the Regulatory Accountability Act provisions,
314 agencies are required to better identify and assess the
315 costs and benefits of regulatory alternatives, generally
316 choose the lowest-cost alternative that meets statutory
317 objectives and adopt a costlier alternative only if it is
318 needed to protect public health, safety or welfare and has
319 additional benefits that justify its additional cost.

320 The Act also increases agency transparency and early
321 public outreach, strengthens agency fact-finding, requires
322 agencies to rely on the best reasonably obtainable science,
323 and strengthens judicial review. The Regulatory
324 Accountability Act contains commonsense reforms that have
325 bipartisan support in both the House and the Senate. In
326 large part, that is because so many of its provisions are
327 modeled on the terms of executive orders that Presidents
328 Reagan, Clinton, Bush, and Obama have issued to compensate
329 for the APA's weaknesses.

330 As long as these principles remain in executive orders,
331 not statutory law, they will too often be honored in the
332 breach. Under the Regulatory Accountability Act, the

333 principles of these orders will at last become binding law.
334 As a result, sound decisions that meet statutory objectives
335 while they respect the needs of workers and the economy will
336 be the order of the day, not the exception. American jobs,
337 American growth, and American competitiveness will all be
338 the better for it.

339 I thank subcommittee Chairman Bachus for holding this
340 prompt markup of the Regulatory Accountability Act, and I
341 urge my colleagues on the subcommittee to pass this vital
342 legislation.

343 Mr. Chairman, thank you very much for your forbearance
344 in allowing me to explain my legislation to the committee.

345 Mr. Bachus. Thank you.

346 Our chairman is not only the chairman of the full
347 committee, but he is also the chief sponsor of this
348 legislation, so it is entirely appropriate that he make a
349 statement in support of it.

350 Are there any amendments?

351 Seeing there are no amendments, a reporting quorum being
352 present, the question is on reporting the bill favorably to
353 the full committee.

354 I am assuming no one else wants to make a statement.

355 Hearing none, those in favor -- well, the question is on
356 reporting the bill favorably to the full committee.

357 Those in favor, say aye.

358 Those opposed, no.

359 The ayes have it and the bill is ordered reported
360 favorably to the full committee.

361 This concludes our business for today. I thank all
362 members for attending, and this meeting is adjourned.

363 [Whereupon, at 2:56 p.m., the subcommittee was
364 adjourned.]